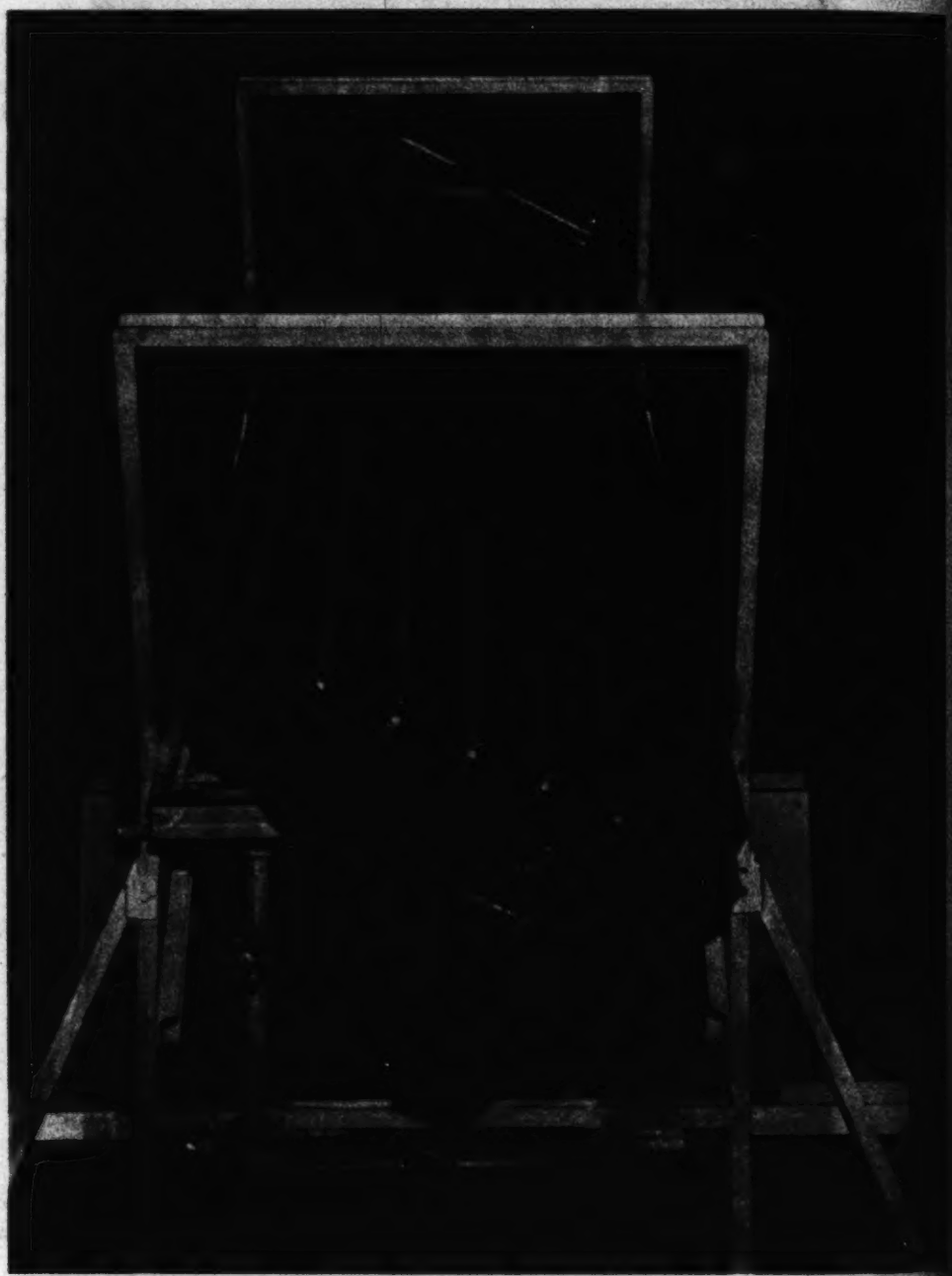
And the machine that defendant is marketing looks like this:



The manufactured machine looks like this:

Exterior

Interior

Exterior

Interior

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

THE LAITRAM CORPORATION,	*	CIVIL ACTION
Plaintiff	*	NO. 67-861
versus	*	
	*	SECTION "C"
DEEPSOUTH PACKING CO., INC.,	*	
Defendant	*	DATED: June 12, 1969

* *

FINDINGS OF FACT

I. INTRODUCTION

1. Plaintiff, The Laitram Corporation ("Laitram"), a Louisiana corporation and owner of United States Letters Patent Nos. 2,694,218 ('218 patent) and 2,825,927 ('927 patent), has brought this action against defendant, Deepsouth Packing Company, Inc. ("Deepsouth"), a Louisiana corporation, for infringement of those patents.

2. Laitram was organized in 1963 as the successor in interest to The Peelers Company ("Peelers"), a Louisiana partnership in commendam; Peelers was formed before the conception of the inventions that are the subject matter of the patents in suit.

3. Deepsouth has a regular and established place of business within this district. Before the commencement of this action, Deepsouth manufactured and sold within this district a slitter trough and a shrimp vein removal apparatus, alleged to infringe certain claims of the '218 and '927 patents. These two machines comprise two of the three units of Deepsouth's model BV 465S "Shrimp DeVeiner" machinery.

4. Jurisdiction in this action lies pursuant to 28 U.S.C. 1338(a).

5. Any finding of fact that might properly be considered to be, in whole or in part, a conclusion of law, shall be deemed to be a conclusion of law.

II. BACKGROUND FACTS

1. The inventions of the patents in suit are concerned with shrimp deveining. Deveining of shrimp involves the removal of the shrimp's abdominal tract imbedded in the back of the shrimp; this tract is known as the "vein," "back strip," "sand bag," "sand vein," "black line" or "line."

2. Shrimp canners began to devein shrimp commercially in the 1930's by the use of hand tools, such as knives or similar devices manipulated by unskilled or semi-skilled employees, usually female.

3. Since 1941, the designation "cleaned" or "deveined" has been used commercially to describe shrimp from which the vein has been removed at least up to the last segment next to the tail. The designation is of considerable commercial value to the firms that devein shrimp.

4. As labor costs increased, it became progressively more expensive to devein shrimp by hand. These costs increased again in 1961 when the Fair Labor Standards Act minimum wage was extended to cover employees in the shrimp industry.

5. Commencing in the 1940's, a number of entrepreneurs attempted to develop various types of machines for deveining shrimp. These machines had limitations, however, and were never fully accepted commercially. Some required hand or individual placement of shrimp in the machine; some required the shrimp to be positioned in a certain manner; some required adjustments to take varying sizes of shrimp. These machines generally used moving parts, such as circular saws or knives, and had a tendency to damage small shrimp.

6. The machinery offered to the industry included the McKinstry machine (also known as the Alvarez, Brock or Seafood Equipment machine), the Greiner machine, the Kroeger (or Coulter) machine and the Envoldsen machine. Some of this machinery was tried out by various shrimp canners but with unsatisfactory results when used for quantity deveining needs and for deveining

of smaller shrimp.

7. In 1952, Fernand and James Lapeyre, two partners in Peelers, who, along with Fernand's brother Emile, had previously invented machinery for peeling shrimp automatically, began to work toward the development of shrimp deveining machinery that would be commercially acceptable to the shrimp canning industry.

8. The Lapeyres commenced experimenting in Fernand's garage in New Orleans.

9. In the course of their experimental work, the Lapeyres recognized the significance of two properties of a shrimp:

(a) As a result of its curved shape, and the distribution of its weight, a shrimp tends to slide down an inclined surface flat on its side, with its back down.

(b) A cut made along the back of a shrimp tends to expose its vein even if the cut is not made precisely in the center of the shrimp's back.

10. The Lapeyres then set out to develop a structure that would utilize these characteristics of shrimp. They built an inclined trough whose surface was lubricated by water from a garden hose placed at its upper end, with razor blades positioned end to end in the trough and above its surface to encounter the shrimp as they descended down the trough and shunt them from blade to blade a sufficient number of times to cut the back and expose the vein. The force of gravity propelled the shrimp against the blades with sufficient momentum to make the cut. The ultimate commercial embodiment became known as the "slitter" or "slitter trough."

11. The Lapeyres also recognized that the greater number of times a shrimp's back was exposed to the blades, the greater would be the mathematical probability that the back would be cut at all places where the vein is near the surface.

12. On August 19, 1952, they filed an application for a patent. This application was initially rejected by the Patent Examiner because she did not think the machine would work. In addition,

various claims were rejected as indefinite, aggregative, and previously disclosed by the prior art. However, on November 16, 1954, patent number 2,694, 218 was issued.

13. The Lapeyres then built a less crude version of the device. In mid-August 1953, experimental commercial use of this machine began at the Grand Caillou Packing Company, a shrimp processing plant located on Bayou Grand Caillou in Dulac, Louisiana.

14. Although in many cases the water action and the interaction of the water and blades washed the veins free from the "slit" shrimp, the operation of both the earlier experimental model and this machine convinced the Lapeyres that additional vein removal machinery was necessary to obtain a satisfactory commercial deveining job.

15. The Lapeyres then turned to the problem of achieving commercially acceptable vein removal from shrimp whose backs had previously been slit. Aside from hand operation, prior attempts by others at shrimp vein removal had involved either gouging or sawing out the vein longitudinally as a continuation or part of the back-slitting operation or boiling or soaking the slit shrimp in blanching tanks.

16. After trying methods similar to these previously used, the Lapeyres decided that the proper way to approach the problem would be to devise a mechanical device that would engage and wedge the vein transversely, and thus forcibly pull it from the shrimp.

17. They conceived of a drum-like structure bearing interior projections to engage or hook and then wedge and pull the vein; this method differed from mechanical methods previously used, in which the motion was longitudinal to the shrimp and not transverse.

18. In a catalogue of the Harrington & King Perforating Company of Chicago, Illinois, they found a stamped material that they thought would serve their purpose. They built a drum-like device incorporating this material, positioning the drum so that it would rotate, slightly inclined from the horizontal, in a small bath of water with a cleansing water spray overhead. In operation, this device removed veins from shrimp in a satisfactory manner.

The commercial embodiment became known as the "tumbler."

19. On July 8, 1954, they filed an application for a patent. This application issued as patent number 2,825,927 on August 8, 1957.

20. In mid-1954, machinery incorporating the inventions of the '218 and '927 patents was offered to the shrimp industry.

21. This offer was made in the middle of a Gulf shrimp season. Before the following spring, the beginning of the next shrimp season, nearly 50% of the available market in the shrimp canning segment of the industry was using the machinery.

22. The deveining machinery incorporating the inventions of the patents in suit has had substantial commercial success in the shrimp canning industry and with shrimp processors who devein shrimp for uses other than canning, but some of these processors still employ hand tool deveining because they consider the hand deveined shrimp superior in quality, and find that less weight is lost in the deveining process.

23. The Laitram machinery was the first to achieve the following results:

(a) It replaces large numbers of workers.

(b) It handles smaller sizes of shrimp than could previously be handled practicably.

(c) It can devein many sizes of shrimp without pre-grading.

(d) It produces a yield from smaller sizes of shrimp comparable to that obtained by hand deveining.

(e) It has a high capacity.

(f) It requires no manual assistance either to feed shrimp into the machine or remove them from it.

(g) Its capacity is predictable.

(h) It can handle masses of shrimp simultaneously and continuously.

24. Insofar as any issue in this action is concerned, all deveining machinery manufactured and leased to the shrimp industry by Laitram has been identical; all "slitters" have incorporated inventions of the '218 patent and all "tumblers" have incorporated inventions of the '927 patent; all such machinery has had placed upon it the proper statutory notice indicating it was embraced by the patents in suit. Any reference to Laitram deveining machinery herein means the machinery incorporating inventions of these patents.

25. Until Deepsouth's sales activities began, about 11 years after the introduction of the Lapeyre deveining machinery, no question was raised in the shrimp industry concerning the validity of these patents.

26. Laitram currently licenses the use of the '218 and '927 inventions by way of lease. Forty-four units of its deveining machinery (each unit including a "slitter" and a "tumbler" embodying the inventions of the patents in suit) were being leased when this action began.

27. When the accused Deepsouth machinery was introduced to the canning market, the operating advantages and substantial benefits resulting from the use of the Lapeyre inventions had already been recognized by the shrimp canning industry.

28. Deepsouth had actual knowledge of the patents in suit within a year after their issuance. Deepsouth's president was the president and sole owner of a corporation that was the second lessee of Peelers deveining machinery; this lease was signed three weeks after the first offer of the machinery.

29. Deepsouth sold its first Model BV 465S "Shrimp De-Veiner" on March 22, 1965.

30. The first vein removal apparatus Deepsouth offered and sold to the industry incorporated an endless "Cyclone" wire mesh belt. Deepsouth's customers were not satisfied with the results achieved by this initial apparatus, and defendant changed its construction to the device accused in this action, a punched-lip-perforated endless belt. The "Cyclone" wire mesh belt has

never been charged with infringement. Defendant changed its construction both because the "Cyclone" belt was difficult to clean, and also because its customers were dissatisfied with the vein removal efficiency of the wire mesh belt.

31. All "slitters" and punched-lip endless belt vein removers manufactured and sold by defendant have been identical insofar as any issue in this action is concerned.

32. On the day prior to commencement of the trial, the court witnessed demonstrations of Laitram machinery and the accused Deepsouth machinery (including the "Cyclone" mesh belt device described in Finding 32 supra), as well as the operation of certain devices constructed under the direction of defendant's trial counsel as replicas of disclosures of certain prior art patents asserted to render the '927 patent invalid.

33. Motion pictures of the operation of the Laitram slitter and the Deepsouth slitter, taken in the presence of defendant's president and defendant's trial counsel, were viewed three times during the course of trial.

34. During the trial, the court examined in the courtroom certain deveining machinery offered to the industry before the Laitram machinery, namely the McKinstry, Greiner and Envoldsen machines.

III. VALIDITY OF THE '218 PATENT

1. Defendant contends that the '218 patent is invalid as anticipated by the prior art and by prior patents including Grayson 2,263,693, Avetta 2,625,705 and 2,626,701, and McKinstry 2,644,900, which is particularly stressed. 35 U.S.C. 102(a), (b) and (c).

2. Neither Grayson 2,263,693 nor Avetta 2,625,705 nor Avetta 2,626,701 is more pertinent than any of the patents relied upon by the Patent Office during prosecution of the '218 patent. None discloses either the individual elements or the structure,

mode of operation or results of the '218 patent; none anticipates the '218 patent.

3. A machine embodying the disclosure of the McKinstry patent (otherwise known as the Avetta, Brock or Seafood Equipment machine) was present in the courtroom through much of the trial. McKinstry is not suggestive of the individual elements or the structure, mode of operation, or results of the '218 patent; it does not anticipate Claim 3 or any other claim of the '218 patent.

4. Defendant further contends that the '218 patent is invalid because it is "obvious." 35 U.S.C. §103. During the course of this action, defendant has at one time or another relied upon the following patents with respect to its allegation of the "obviousness" of the '218 patent: Meredith 857,884; Bottker 2,034,691; Doxee 2,102,956; Bottker 2,147,633; Faulkner 2,334,431; Grayson 2,263,696; Grayson 2,263,697; Grayson 2,292,068; Krull 2,301,729; Sjostrom 2,335,806; Hendrickson 2,380,755; Watson 2,528,402 Kite 2,537,836; Oss 2,540,990; Riha 2,541,781 Abbot 2,546,414; Envoldsen 2,622,270; Avetta 2,625,705; Avetta 2,626,701; Miller 2,637,064; Clemens 2,641,020; McKinstry 2,644,980; Jagger 2,659,930; Schneider 2,665,449; Yanus 2,683,281; Streich 2,685,705; Pinney 2,702,921; Streich 2,716,776; Miller Re. 24,115 and Hoh 566,622 (German). None of these patents, singly or in combination with one or more of the others, suggests or renders obvious the combination of elements of the patent and their cooperative relationship. The '218 patent, like the '927 patent, is not complicated. Its very simplicity by comparison with the cited prior art demonstrates that it was not obvious, as does the very number of patents cited.

5. The new combinations found in the claims of the '218 patent disclose a new structure, a new mode of operation and new, beneficial and useful results in shrimp deveining. The elements

of these combinations are so arranged and cooperate in such a manner as to function differently from the prior art, and they do more than merely replace labor.

6. The invention of the '218 patent is a radical departure from the prior art and the differences between the subject matter claimed by the '218 patent and the prior art are clearly not such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.

7. The '218 patent is a basic and pioneer patent that revolutionized structures, operations and results in quantity shrimp deveining.

8. Defendant also contends that, if the claims asserted against the accused Deepsouth structure are construed to embrace that structure, they are invalid as being broad and indefinite. But the asserted claims of the '218 patent are sufficiently definite and meet the requirements of both the patent statutes and the Constitution.

IV. LITERAL INFRINGEMENT OF THE '218 PATENT

1. Plaintiff urges that defendant's slitter infringes Claims 1, 3, 9, 10, 11, 12, 14 and 15 of the '218 patent either directly or by virtue of the doctrine of equivalents. Defendant denies infringement on either score.

2. The Deepsouth slitter comprises an inclined trough incorporating five pairs of longitudinally placed knives spaced above the trough and supported along their length, each knife in each pair being opposed (or parallel) to the other. There are thus five separate channels (or paths), each formed by opposing knives, down which the shrimp pass. The trough is adapted to rock about a longitudinal axis by means of a motor-driven crank arm attached to the underside of the trough. By a pipe disposed across the

upper end and spaced above the surface of the trough, water is supplied to the trough at its upper end prior to the point where shrimp are deposited on the trough. The pipe is perforated with small holes that are adapted to deliver water under pressure in a downwardly direction to the trough.

3. In the operation of the Deepsouth slitter, peeled deheaded shrimp are delivered to the inclined trough at its upper end by a conveyor belt, and distributed to the various channels (or paths) of the slitter by means of a fan shaped spreader baffle. The knives form a path for the shrimp, and, as the slitter rocks, the shrimp are shunted from side to side. As each shrimp proceeds down the trough, it is in a position diagonal to the knives as it departs from and approaches a knife, and parallel to the knives as it slides along a knife. The backs of the shrimp are slit as they strike the knives.

4. The court finds that no asserted claim of the '218 patent has been literally infringed by defendant's slitter.

5. The findings concerning the literal infringement of Claim one are stated in the legal opinion accompanying these Findings of Fact.

6. Claim three reads as follows:

> "A shrimp de-veining machine comprising an inclined trough down which the shrimp are induced to slide, a knife in said trough positioned to be encountered by the shrimp to cut the membrane confining the vein, and a water spray to the trough directed upon the shrimp for sliding shrimp down the trough and for flushing out the vein through the severed membrane."

7. Defendant's slitter does not have "a water spray to the trough directed upon the shrimp." The header (described in detail in Finding Number 2) is not a spray. It has a series of small holes, but these are spaced so widely apart that the court does not consider it to be a "spray" as that term is

ordinarily understood. The water is not directed upon the shrimp, but is delivered to the top of the trough to form a lubricating film upon which the shrimp slide when they are fed to the trough at a point well below the header, and/to wash veins from the slit a bath shrimp. Hence Claim three is not literally infringed.

8. Claims 9, 11 and 15 are not infringed since defendant's device does not have "knives diagonally positioned above said surface to be engaged by the shrimp."

9. Claim 10 is not infringed since the accused device does not employ "membrane incising means diagonally positioned above said surface to be engaged by the shrimp...."

10. Claim 12 is not infringed since defendant's slitter does not employ "cutting means diagonally positioned with their cutting edges above said surface and/across said surface." disposed at least partially

11. Claim 14 is not infringed because defendant does not employ "knife means diagonally disposed above the surface of said member."

12. Claim 15 is not infringed for the additional reason that defendant's structure is not characterized by "controlled water sprays above said knives."

V. INFRINGEMENT OF THE '218 PATENT UNDER THE DOCTRINE OF EQUIVALENTS

1. In order for infringement to be found under the doctrine of equivalents in this case, the device claimed and defendant's slitter must have substantially the same structure, function in substantially the same manner, and achieve substantially the same results.

2. A pioneer patent is entitled to a broader range of equivalents than a mere run of the mill improvement patent. The '218 patent is therefore entitled to a full range of equ alents.

3. In the device disclosed by the '218 patent, the shrimp slide on their sides down the inclined trough that has been lubricated by water. Their heavier back portion causes the shrimp to orient themselves in a back-down position. The shrimp are shunted back and forth by the force of gravity; this causes them to strike, bounce off and be guided by the diagonally disposed blades. The shrimp necessarily are slowed in their travel down the trough by each hit, and they must regain cutting speed by longitudinal travel to the next knife; this requires a minimum longitudinal spacing of the knives. Only one forceful hit per knife is obtained. The water piles up against the knife blade, forming a cascade which, as disclosed by the '218 patent, serves in part to remove veins through the severed membrane in conjunction with the spray directed upon the shrimp. According to F.S. Lapeyre, this cascade cushions the shrimp. The shrimp must force the water aside to reach the knife.

4. The Laitram slitter incorporating inventions of the '218 patent consists of an inclined trough having opposed knives spaced above the surface of the trough; the knives are positioned so as to shunt the shrimp from one knife to another as the shrimp pass down the trough. The surface of the trough is lubricated by water introduced by a screw conveyor at the upper end of the trough concurrently with the shrimp.

5. The Deepsouth slitter has previously been described in Findings 2 and 3 of Section V of these Findings of Fact. In the Deepsouth device, as the shrimp pass down the rocking trough, they, and the water, slide laterally across the trough, the water passing freely under the knives. The court personally observed that the shrimp travel almost horizontally across the trough surface on the upswing of the trough and at a somewhat greater angle during the down swing of the trough, thus following a

"S-like" path. This is not however a functional factor.

6. The rocking trough in defendant's slitter is an "equivalent" of and performs the same functions as the inclined knives in the machine disclosed by the '218 patent. In both machines, the force of gravity alone causes the shrimp to be shunted from side to side.

7. Accordingly, the elements, structure, mode of operation, functions and results of the Deepsouth slitter are the substantial equivalent of both the combination described in Claim one of plaintiff's '218 patent and the Laitram commercial slitter that embodies that claim. The substantially equivalent elements of the Deepsouth slitter coact in substantially the same way.

8. In addition, the elements, structure, mode of operation, functions and results of the Deepsouth slitter are the substantial equivalent of both the combination described in Claim three of the '218 patent and Laitram's manufactured slitter. The substantially equivalent elements of the Deepsouth slitter coact in substantially the same way.

9. The '218 specification states and the '218 claims all recite that the invention relates to a shrimp "deveining machine." The machine preferably will perform the dual function of slitting the shrimp and washing out their veins. From the specification it is clear that the spray nozzle disposed "above the trough" and the water sprays directed "down upon the trough base" are intended to wash out the vein as well as to provide lubrication. The water used in defendant's slitter also performs both of these functions.

10. With particular respect to the portion of Claim three relating to water and water delivery structures, while the water in the Deepsouth slitter is not a spray in the ordinary

meaning of that term, it delivers water to the trough under pressure in a downwardly direction. And, while the water is not "directed upon" the shrimp in the literal meaning of "directed upon," (i.e., directed from directly overhead upon the shrimp), the means for delivering water to the Deepsouth slitter is the equivalent, insofar as elements, structure and operation are concerned, of the means disclosed by the '218 patent. Further, the water structures of the Deepsouth slitter are equivalent to those achieved in the Laitram slitter.

11. Defendant contends that certain apparent structural and operational characteristics of the Deepsouth slitter result in a significantly different mode of operation and produce different results. Neither centrifugal force nor momentum, however, is a significant force in the operation of the machine. Gravity is the only significant force operative in both slitters. The role and effect of these other two forces is insignificant compared with the role and effect of gravity.

12. While viewing the Laitram and Deepsouth slitters in operation, and again while viewing the motion picture, the court noticed the following differences in the mode of operation of the two machines:

(a) Shrimp impacted against the knives a greater number of times in defendant's slitter than in plaintiff's slitter.

(b) Shrimp appeared to remain against the knives for a longer period of time in defendant's slitter than in plaintiff's slitter.

(c) Shrimp travelling down the trough appeared to bounce off and roll along the knives somewhat less in defendant's slitter than in plaintiff's slitter.

(d) The water in defendant's slitter flowed from slitting channel to slitting channel underneath the knives, whereas the water in plaintiff's slitter was generally confined to one slitting channel due to the fact that the knife holders in plaintiff's slitter were continuous under each knife.

(e) In defendant's slitter, the shrimp travel a path in which the angle of the horizontal movement is less acute than the angle of the vertical movement, i.e., a path that could be depicted as virtually "S" shaped, whereas the shrimp in plaintiff's machine travel a path at which the angles of movement are less differentiated.

(f) Because the number of rocking motions of defendant's trough is greater than the number of diagonally opposed blades in plaintiff's device, a greater number of knife hits is obtained by defendant's slitter than with a Laitram trough of the same length for each shrimp that slides down the respective troughs.

(g) The ability of water to pass under defendant's blades avoids both the formation (and the function) of plaintiff's "cascade." The cascade has undesirable cushioning effects, but this is negligible in its interference with the function of plaintiff's device.

13. These differences are not significant functionally, and they do not derogate from the substantial similarity of the mode of operation of the two slitters. They are therefore considered to be of relatively little significance on the issue of infringement under the doctrine of equivalents.

14. As the legal opinion accompanying these Findings points out, "Essentially, plaintiff has patented a device in which shrimp slide down a trough hitting knives at an angle so that their backs are slit and their veins are exposed. Defendant's slitter operates on the same basic principles, performs the same function and achieves the same result."

15. Hence the elements, structure, functions, and mode

of operation of the Deepsouth slitter are equivalent, and its elements coact in substantially the same way as both the device claimed by the '218 patent and the Laitram commercial slitter.

16. The results achieved by the Deepsouth slitter are substantially the same as those achieved by the Laitram slitter. When shrimp leave each slitter, they are slit along their backs; each slitter fully deveins some of the shrimp. So far as could be determined from visual inspection, the shrimp leaving the two machines are indistinguishable.

17. While defendant's slitter is covered by U.S. Patent No. 3,031,714, and was found patentable by the Examiner over the disclosure of the '218 patent, the court finds that it is the equivalent of the slitter disclosed by the '218 patent. The elements, structure, function, modes of operation, and results are not different in any material respect.

VI. FILE WRAPPER ESTOPPEL

1. Defendant contends that, by reason of the argument of the attorneys who prosecuted the '218 patent and the amendments to Claimsone and three of the '218 patent (Application Claims six and fourteen), plaintiff is estopped from claiming infringement under the doctrine of equivalents with respect to defendant's slitter trough.

2. As first filed in the Patent Office, Claim one (Application Claim six) read:

> "A shrimp deveining machine comprising an inclined trough, a water supply to said trough, and knives spaced above the trough and staggered at opposite sides of a path down the trough, the knives being diagonally disposed to the path in successively opposite directions."

3. Claim one (Application Claim six) was first rejected as inoperative, indefinite, and aggregative. There

was no rejection on the basis of the prior art.

4. In response to this Patent Office rejection, Application Claim six (issued in amended form as Patent Claim one) was amended as shown below:

> "1. A shrimp deveining machine comprising an inclined trough, a water supply to said trough, and knives carried by said trough and being spaced above the trough and being oppositely inclined along a path down the trough, said knives extending partially diagonally of the path in successively opposite directions."

5. Plaintiff filed affidavits with the Patent Office describing the machine's successful operation, and counsel for plaintiff filed formal "Remarks" with the Patent Office discussing the amendment and affidavits.

6. The findings concerning the applicability of file wrapper estoppel to Claim one are stated in the legal opinion.

7. The findings concerning the non-applicability of file wrapper estoppel to Claim three are stated in the legal opinion.

VII. VALIDITY OF THE '927 PATENT

1. Defendant contends the '927 patent is invalid because it was anticipated by: (a) prior patents, including White 71,434; Vucassovich 2,331,855 and 2,355,405; Avetta 2,625,705 and 2,626,701 and Miller 2,637,064; (b) deveining practices employing hand tools.

2. Defendant asserts that United States Patent 71,434, a patent issued November 26, 1967 to Napoleon Bonaparte White for an Improved Machine For Scaling Fish, anticipated every asserted claim of the '927 patent. In furtherance of this contention, defendant constructed a device as a replica of the disclosure of the White patent, and demonstrated it to the court. Similarly, in furtherance of its contentions as to Vucassovich 2,331,855, defendant constructed and demonstrated a device as a replica of the Vucassovich patent.

3. Neither White nor Vucassovich, however, teaches or discloses the combination of elements and element co-action found in the '927 patent, and neither of them anticipates the '927 pater

4. Defendant also asserts that Claims 1, 12, 13, 14, 15 and 18 of the '927 patent are anticipated by Miller 2,637,064. Miller was cited by the Patent Examiner to show "the state of the art," but was not applied to show either anticipation or obviousness; the Patent Examiner considered and rejected the Miller patent as a reference Miller does not teach or disclose the subject matter claimed in Claims 1, 12, 13, 14, 15 and 18, and it does not anticipate those claims.

5. Defendant further relies upon Vucassovich 2,355,405; Avetta 2,625,705 and Avetta 2,626,701 as anticipating one or more claims of the '927 patent. None of these teaches or discloses the inventions of the '927 patent; none anticipates the '927 patent.

6. The inventions of the '927 patent were not anticipated by hand deveining practices.

7. Defendant further contends that the '927 patent is invalid pursuant to 35 U.S.C. Section 103 because it is "obvious." Defendant relies principally on combinations of one or more of the disclosures of White; Vucassovich 2,331,855; Macklett 565,999 and Kell 1,028,736. Vucassovich 2,331,855 was cited and relied upon by the Examiner. White was in a patent sub-class searched by the Examiner when he made his search on the '927 application; it is concluded that the Examiner reviewed White and discarded it. White, Macklett and Kell are no more pertinent than the other patents referred to or cited by the Examiner during the prosecution of the application resulting in the '927 patent. None of those patents, singly or in combination with one or more of the others, suggests or renders obvious the combination of the elements of the '927 patent and the cooperative relationship covered by it.

8. During the course of this action, defendant has at one time or another cited and/or relied upon the following patents with respect to its defense of obviousness of the '927 patent: White 71,434; McCabe 161,425; Baker 430,372; Tobin 493,454; Mackett 565,999; Meredith 857,884; Lafrentz 916,725; Svobda 925,527; Kell 1,028,736; Luer 1,210,959; Kellington 1,310,662; Sprague 1,383,162; Bukham 1,475,929; Price 1,615,134; Davis 1,620,953; Gallison 1,692,984; Chandler 1,715,991; Horstmann 1,737,087; Randall 1,781,301; Lehman 1,811,017; Bottker 2,034,691; Dorment 2,052,548; Krull 2,301,729· Vucassovich 2,331,855; Vucassovich 2,355,405; Hendrickson 2,380,755; Caston 2,518,448; Watson 2,528,402; Kite 2,537,836; Oss 2,540,990; Riha 2,541,781; Abbott 2,546,414; Envoldsen 2,622,270; Avetta 2,625,705; Avetta 2,626,701; Lapeyre 2,637,065; Gardes 2,637,074; Clements 2,641,020; Harris 2,652,588; Kaplan 2,653,345; Greiner 2,663,898; Streich 2,685,705;

Jonsson 2,784,450; Kelly Re. 14,447; Molsbeck 324,397 (France); Jacobson 643,383 (France); Petterson 475,307 (Germany) and Peterson 58,120 (Norway). None of these patents, singly or in combination with one or more of the others, teaches, discloses, suggests or renders obvious the combination of elements of the patent and their cooperative relationship. In view of the fact that the invention is uncomplicated, the very number of patents cited by defendant indicates that it was not obvious.

9. The patents listed above that were not cited by the Patent Office during the prosecution of the '927 patent are no more pertinent than those that were cited during such prosecution. Plaintiff's invention was neither anticipated nor obvious.

10. The new combination claimed by the '927 patent discloses a new structure, a new mode of operation and new, beneficial and useful results in shrimp deveining and the elements of these combinations are so arranged and so cooperate as to function differently and do more than merely replace labor. The '927 patent discloses a valid combination.

11. Defendant contends that all claims of the '927 patent asserted against the Deepsouth vein removal apparatus (Claims 1, 12, 13, 14, 15, 17, 18), are invalid as "too broad" and indefinite.

12. The findings concerning the invalidity of Claims 12, 13, 14, 15, 17, and 18 for overbreadth and indefiniteness are stated in the legal opinion accompanying these Findings of Fact.

13. As stated in the legal opinion, Claim one is neither indefinite nor overbroad. It does not employ functional language. Claim one is valid.

VIII. INFRINGEMENT OF THE '927 PATENT

1. Plaintiff accuses defendant of infringing Claim one of the '927 patent by manufacture and sale of the Deepsouth "discharge conveyor" deveiner. Defendant denies infringement, both literal and equivalent, and urges, alternatively, that there is no infringement because of the applicability of the negative doctrine of equivalents.

2. Laitram's commercial embodiment (the "tumbler"), incorporating inventions of the '927 patent, consists of a drum with lips having a smooth, rounded free edge punched inwardly at slight angles into the drum; these lips are repeated in progressive series around the periphery of the drum and throughout its longitudinal extent. The drum is suspended at a slight inclination and mounted for rotatable movement with the direction of rotation so that the free edges of the lips are leading and the wedge is trailing. The drum, rotated by an electric motor attached by pulleys to the drive shaft, is mounted in a shallow water bath; a spray that travels reciprocally along its external longitudinal surface is mounted over and outside the drum.

3. In the operation of the Laitram "tumbler," previously slit shrimp are introduced into the rotating drum and agitated in the water; as the drum rotates, the leading edges of the lips engage the loosened veins; these then slide into the mouths of the angles formed by the lips and are caught or locked at the apexes of the angles. In cases where the vein is firmly attached only at head or tail, rather than at both points, the vein will be washed into the lip. Even when this does not occur, the vein is generally pulled away and detached from the meat. The initial loosening of the veins and their entrapment in the bights of the lips is promoted by the movement of water from the inside of the

drum to the outside through the perforations in the drum. The inclination of the drum promotes travel of the shrimp from the intake to the discharge end of the drum, where they are discharged with veins removed. The water spray clears the accumulated veins from the vein engaging means of the drum.

4. In both the drum and stationary trough, a level or body of water is maintained in the apparatus and is employed, inter alia, as the means to pass the shrimp through the apparatus. This body of water preferably is from three to five inches deep. Manifestly, it must be of sufficient depth to perform its disclosed function of conveying the shrimp through the device.

5. In the mode of operation disclosed by the '927 specification, the water maintains the shrimp in semi-flotation in order that the lips can engage the veins of the shrimp without abrasion and the consequent loss of yield and color.

6. In the commercial Laitram revolving drum deveiner, the shrimp must remain in the drum at least one minute in order to effect commercially acceptable vein removal.

7. In the operation of the '927 revolving drum deveiner, the shrimp are laterally oriented by action of the water. The lip-like projections are disclosed to dig under the veins, engage and remove them as the shrimp, in a state of semi-flotation, contact the lips protruding from the inner surface of the drum.

8. Defendant's shrimp vein removal apparatus consists of a moving, upwardly inclined, endless belt driven by an electric motor. The surface of the endless belt bears a multiplicity of lips having a smooth, rounded free edge punched outwardly at slight angles from the interior to the exterior of the belt, repeated in progressive series around the periphery of the belt and across its width; they are identical in formation and struc-

ture to the vein engaging and wedging elements disclosed in the '927 patent and utilised in Laitram's commercial embodiment thereof. A trough containing water operated to deliver the shrimp to the belt.

9. In the operation of defendant's machine, slit shrimp are introduced to the endless belt and are moved from the trough along with the water in the same direction in which the belt is travelling, but at a slower speed. They are agitated in the water and tumble on the belt where the pneumatic lip projections engage and wedge the loosened veins. Those shrimp that come to a rest on the belt as they reach belt speed, they are discharged at the belt's upper end with veins removed. Additional water is delivered to the belt surface from flights of jets alongside and above the belt surface; these water jets tumble any shrimp whose veins were not engaged and wedged at the lower end of the apparatus. They also clean the belt. There is no body or level of water maintained on the belt.

10. During the viewing of the Laitram and Deepsouth vein removers in operation, the court noticed the following visual differences in the mode of operation of the two machines:

(1) there appeared to be more water utilised in the plaintiff's machine than in the defendant's;

(2) the speed of travel of defendant's endless belt was greater than that of plaintiff's drum, and shrimp remained on the belt a shorter period of time.

11. These noticed differences do not derogate from the substantial similarity of the mode of operation of the two vein removers and are considered to be of relatively little significance on the issue of infringement.

12. The witnesses called by the parties differed as to the relative amount of abrasion and consequent loss in yield as between the Laitram and Deepsouth deveiners. The tests conducted did not yield results sufficiently different to be persuasive.

13. While defendant contends that its vein removal apparatus also operated as a conveyor, and differed in this regard from the plaintiff's deveiner, the court finds that both plaintiff's and defendant's vein removers operate as conveyors, and that there is no functional difference in that respect.

14. Claim one reads:

> "In a shrimp vein remover, a supporting member, a lip projecting at an acute angle from the supporting member and having a smooth rounded free edge for engaging beneath the vein of a shrimp and for wedging the vein between the lip and the supporting member, and means operatively associated with said supporting member for relatively moving the shrimp with respect to said member to cause separation of the vein from the shrimp meat.

15. The Deepsouth deveiner is composed of:

(a) "a supporting member"- the conveyor belt

(b) "a lip projecting at an acute angle from the supporting member and having a smooth rounded free edge for engaging beneath the vein of a shrimp and for wedging the vein between the lip and the supporting member"

(c) "means operatively associated with said supporting member for relatively moving the shrimp with respect to said member to cause separation of the vein from the shrimp meat"- the water.

16. Claim one is not limited to the rotating drum type of deveiner, and it is literally infringed.

17. Furthermore, while defendant's deveiner is covered by Patent No. 3,414,934, and was found patentable by the Examiner over the disclosure of the '927 patent, the court finds that, in addition to literal infringement, defendant's device is the equivalent of the deveiner disclosed by the '927 patent. Its elements, structure, function, mode of operation and results are equivalent, and its elements coact in substantially the same way as both the deveiner claimed by the '927 patent and the machine marketed by plaintiff. There are no material differences in the two machines.

18. Since the Deepsouth vein remover has substantially the same elements, substantially the same mode of operation, performs the same function, and achieves the same results as the Laitram deveiner embodying the '927 patent, the negative doctrine of equivalents is not applicable.

IX. ENFORCEABILITY

1. Defendant contends that both the '218 and the '927 patents are unenforceable by reason of (a) laches on the part of Laitram; (b) estoppel arising in favor of Deepsouth because of its reliance on the actions or inaction of Laitram. Defendant urges therefore that plaintiff is precluded from monetary recovery for past infringement.

2. At some time in early or mid-1962, Peelers' service coordinator, while on a regular trip to certain Texas plants where Peelers' shrimp processing machinery was located, saw a "rocking" slitter at Aransas Seafood Company in Aransas Pass, Texas. Peelers' management knew that the manager of that plant was Paul C. Skrmetta, father of defendant's president, Raphael Q. Skrmetta. The sighting was reported to Peelers' management and was the first knowledge it had received of the existence of any deveining machinery apparently similar to its own. When the same employee made a subsequent trip to this plant, he did not see the "rocking" slitter. Also in 1962, a "rocking" slitter similar to the one seen at Aransas Seafood was seen by a serviceman of Peelers in the Morgan Daniels shrimp plant at Corpus Christi, Texas.

3. Paul C. Skrmetta was engaged in the development of shrimp deveining machinery at his seafood plant, Skrmetta Seafood Company, on Broad Street in New Orleans in 1956 and 1957. There was testimony that, at some time in mid-1957, a comparative test was held in the Deepsouth plant to compare results obtained by the Peelers' slitter with results obtained by an experimental

"rocking" slitter constructed by Paul C. Skrmetta in his plant. This test was decided upon spontaneously. Information about this test or the existance of a "rocking" slitter at the Broad Street plant did not come to the attention of Peelers' management until after this suit was filed.

4. In 1958, Paul C. Skrmetta and Raphael Q. Skrmetta filed an application for a patent on a shrimp deveiner. A patent was issued to the Skrmettas on May 1, 1962, and one apparatus described and depicted in the patent was a "rocking" slitter very much like the "rocking" slitter accused of infringement in this action. Peelers' management became aware of the existence of this patent shortly after its issuance.

5. Hunt Foods, a firm that does a considerable amount of shrimp canning, approached Deepsouth some time before October, 1964, indicating a desire that Deepsouth deveining machinery be "perfected" so that it, as a prospective customer, could view a demonstration. Hunt Foods and at least one other customer asked Deepsouth to get a commitment from Laitram on Laitram's position with respect to its patents. A draft of Deepsouth's first letter to Laitram was sent by Deepsouth to Hunt Foods for approval before being dispatched to Laitram, and further advice was sought from Hunt Foods by Deepsouth before a subsequent communication was addressed to Laitram.

7. In mid-October, 1964, Laitram received a letter from Deepsouth announcing that Deepsouth had "developed" a deveining machine and was "preparing to offer it to Shrimp Canners and Processors." Laitram replied, indicating that (a) it had no legal reason for inspection ; (b) it assumed no responsibility for Deepsouth's request; and (c) it had a definite policy to take proper steps when its patent rights were invaded.

8. Deepsouth then commenced the manufacture and sale

of deveining machinery. In making its decision to do so, its major interest was to find a profitable market. However, it did consider Laitram's refusal to inspect Deepsouth's machine, and it relied upon this to some extent, believing that the actions taken would favorably influence the outcome of litigation if a patent infringement suit ensued.

9. But Deepsouth could not reasonably believe that it would not be sued for patent infringement.

10. In mid-May, 1965, a Laitram serviceman, while on a regular visit to service Laitram machinery in the Hunt Foods plant at Harvey, Louisiana, noticed deveining machinery bearing a Deepsouth nameplate.

11. A short time later, in late June or early July, 1965, another Laitram serviceman, while on a regular service visit to a plant at Dulac, Louisiana, where Deepsouth deveining machinery had been noticed a month earlier, saw that a punched lip-perforated endless belt had replaced the "Cyclone" wire mesh endless belt as the shrimp vein removal apparatus (the third unit) of the Deepsouth deveining machinery. This was the first knowledge Laitram had of any Deepsouth punched lip vein removal apparatus.

12. Deepsouth offered some evidence in support of its allegation that it had been prejudiced by the Laitram's failure to accept its offer to inspect its "rocking" slitter. This evidence consisted of estimates, unsupported by invoices, receipts or cancelled checks; these estimates related to "off the shelf" items, some of which were used only on second and third units of its machinery, the "jet washer" and the fingernail belt. There was no evidence of capital investment in plant; no evidence of purchase of machinery other than a few small hand tools;

and no evidence of substantial advertising.

13. The facts as summarized, show the following:

(a) Peelers knew of the "rocking" slitter patent in 1962.

(b) Peelers first knew of a machine employing the "rocking" slitter principle in 1962; the "rocking" slitters its employees then saw were not manufactured, used or sold by Deepsouth but had been made with Deepsouth's assistance and information.

(c) Laitram first learned of Deepsouth's use of a punched lip fingernail belt as a deveining device in 1965.

14. Laitram asserted its patent rights within a reasonable period of time. The time that elapsed after it became aware of the Deepsouth devices was not enough to induce Deepsouth to believe that Laitram had abandoned its patents or considered its patent rights to be worthless. Laitram did not acquiesce in any of Deepsouth's activities.

15. Considering the prior relations of the parties, Laitram should have inspected the Deepsouth machines when offered an opportunity to do so, but Deepsouth could not reasonably have relied on this failure, and Laitram is not estopped to assert its rights merely because of it.

16. Deepsouth did not show any significant investment in plant or equipment relating to manufacture of deveining machinery made as a result of Laitram's conduct, and thus did not show any damage or prejudice to itself resulting from Laitram's

actions or failures to act.

17. The '218 and '927 patents are enforceable against defendant.

UNITED STATES DISTRICT JUDGE

New Orleans, Louisiana
June 12th, 1969

PORTIONS OF PRE-TRIAL ORDER

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

THE LATHAM CORPORATION,	:	
Plaintiff	:	**CIVIL ACTION**
versus	:	**NO. 67-861**
PENTHOUSE PACKING CO., INC.,	:	**DIVISION C**
Defendant	:	

PRETRIAL ORDER

7. The facts established by the pleadings or by stipulation or admission of counsel are as follows:

(5) The slitter trough and finger nail belt equipment heretofore and now being manufactured and sold by defendant have all been identical insofar as infringement considerations are concerned.

(6) Prior to 1965 defendant manufactured and sold as one of the three units forming its dewining equipment a woven wire belt. Plaintiff has not and does not charge that defendant's dewining equipment employing such woven wire belt is an infringement of any of the claims of United States Letters Patent No. 2,825,927.

14. The following amendments to the pleadings are requested:

(1) Defendant withdraws the following paragraphs of its answer as defenses:

Paragraph 14 - The defendant avers on information and belief that each said patent is unenforceable by reason of misuse thereof by and unclean hands and bad faith of plaintiff.

Paragraph 15(g) - Moreover defendant avers on information and belief that plaintiff is estopped from suing for any more than a reasonable royalty under its devalner patents because of its representations and other actions and inactions during the settlement proceedings of Civil Action 6736 which was recently settled before this Court.

(2) Defendant withdraws the following paragraph of its counterclaim:

Paragraph 22 - The defendant avers on information and belief that plaintiff has had a long history of litigation involving misuse and unfair competition; that plaintiff has been found to have abused its patent-based monopoly in the diving processing machinery field by both the Federal Trade Commission and the Court of Appeals for the 9th Circuit; that defendant has just this year settled a vexatious infringement suit (C.A. 7[illegible]), filed in November of 1977, brought by plaintiff and which was pending before this Honorable Court for approximately ten years, incurring great expense, and which was thought by defendant to have fully settled all patent claims or rights of plaintiff as against defendant.

DISTRICT COURT ORDER: DATED March 23, 1970

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

THE LAITRAM CORPORATION,	*	CIVIL ACTION
Plaintiff	*	NO. 67-861
versus	*	
DEEPSOUTH PACKING CO., INC.,	*	SECTION "C"
Defendant.	*	

* * * * * * * * * * * * * * * * * * *

ORDER

Defendant, Deepsouth Packing Co., Inc., having moved to modify the injunction outstanding in this action and issued on June 30, 1969, and modified on December 3, 1969, and briefs having been filed on behalf of both plaintiff and defendant, oral argument having been heard on behalf of both plaintiff and defendant, the deposition of Raphael O. Skrmetta, President of Deepsouth Packing Co., Inc., having been taken on February 25, 1970, with exhibits identified therewith and made part thereof and this Court having considered such briefs, oral arguments, deposition and exhibits, and this Court having rendered an opinion dated March 9, 1970,

IT IS HEREBY ORDERED THAT defendant's motion to modify the writ of injunction issued herein is DENIED, and plaintiff's suggestion that ~~he could~~ the court declare the conduct proposed by the defendant violative of the injunction is also DENIED.

The undersigned Judge is of the opinion that this order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from this order, by either plaintiff or defendant, as authorized by 28 U.S.C. 1292(b), may materially advance the ultimate termination of this litigation.

UNITED STATES DISTRICT JUDGE

New Orleans, Louisiana
March 23, 1970.

PORTION OF FILE WRAPPER FOR PATENT NO. 2,694,218

DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE
WASHINGTON

L.H.Marshall:do

Paper No. 3

Wilkinson & Mawhinney
Suite 444
Munsey Bldg.
Washington 4, D. C.

Applicant: Fernand S. Lapeyre et al.

Ser. No. 305,184

Filed: Aug. 19, 1952

For: SHRIMP DE-VEINING MACHINES

MAILED
APR 30 1953
Pat. Off.

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Ret Chas.

This application has been examined.

References relied upon:

Watson	2,528,402	Oct. 31, 1950	146-162 XR
Hoh (Germany)	566,622	Dec. 21, 1932	146-162
	(1 sht. drwg., 1 pg. spec.).		

Reference cited to show the state of the arts

Doxsee, Jr., et al. 2,102,945 Dec. 21, 1937 17-2 XR

This application is informal in that the name of the second inventor is not uniform in the papers. The typed name in the single signature form appears "James M. Lapeyre, III" while the name on the drawing and the signature appears "James M. Lapeyre". Uniformity throughout the papers is required.

On allowance of any claim, further revision as to form may be required. (Order 5267; 604 O.G. 398)

Claims 1 to 16 are rejected as being inoperative for the purpose disclosed. It is not seen how the shrimps moving down the inclined table will present their back portions only to the knives, how the hardened shell will be split and the vein removed. If applicants desire to further prosecute this application they should submit proof of its

2-3.

operativeness by way of motion pictures, a physical embodiment or affidavits.

Claims 1 to 6, 9 to 13, 15 and 16 are further rejected as being indefinite. In claims 1 to 5, "surface" and claims 15 and 16, "cutting zones", are intangible elements which have been positively included in the claims. See Ex parte Davin 100 O.G. 452; 1902 C.D. 251. In claims 2, 4 and 6, "the path of movement" or the "path" lack antecedent basis in the specification. In claims 2 and 13, the position of the knives should be set forth with respect to the elements of structure of the device and not in terms of the path of movement of the material being worked upon. In claim 9, it is not understood what is meant by "to propel the shrimp flatwise". Claims 10 to 12 are indefinite for the reason that they fail to read upon a single figure of the drawing. See Ex parte Wadsworth 317 O.G. 231; 1923 C.D. 88. In claim 13, line 2, it should be stated to what the trough is pivoted. Same line, "at", both occurrences, is indefinite in that it is inaccurate. The jack and the pivot point both appear to be located inwardly of the ends of the trough.

Claims 3, 5 to 9 and 14 are further rejected as being aggregative in form in that they are a mere catalog of parts. Each element recited in a claim must be related in terms of structure to some other recited element. See In re Hall 614 O.G. 11; 1948 C.D. 534.

Claim 7 is rejected as being obviously fully met by the disclosure of either Watson or Hoh, cited above.

Claims 1, 2, 4, 8 and 9 are further rejected as failing to point out any patentable distinction over the

disclosure of either of the patents to Matson or to Noh. It would not involve invention to incline the support means of either of the patent structures. With respect to the recitation of a plurality of knives, it is held that to provide a plurality of knives in either of the patent structures would amount to no more than a mere duplication of parts and not one involving invention.

Claim 17 is rejected as failing to comply with the requirements of 35 U.S.C. 112.

All of the claims are rejected.

Examiner

RECEIVED
NOV 3- 1953

IN THE UNITED STATES PATENT OFFICE

In the application of
FERNAND S. LAPEYRE, et al
Serial No. 305,184
Filed August 19, 1952
For: SHRIMP DE-VEINING MACHINES

Division 5

Hon. Commissioner of Patents
Sir:

In response to Official Letter dated April 30, 1953:-

Cancel claims 4, 5 and 17.

Claim 1, line 1, after "inclined" insert --trough-like--;

line 2, after "and" insert --diagonally-- and after "knives", insert --supported along their lengths and being so--.

Claim 2, line 1, after "inclined" insert --trough-like--;

line 3, after "supported" insert --along their length--.

Claim 3, line 2, after "a" (first occurrence) insert --trough-like--;

line 3, after "knife" insert --parallel to and--;

line 4, cancel the period and add --, and said means supporting said knife from the surface along its length.--

Claim 6, line 2, after "knives" insert --carried by said trough and being--;

line 3, cancel "staggered at opposite sides of" and substitute --being oppositely inclined along--;

line 4, change "the" (first occurrence) to --said--, cancel "being diagonally disposed to" and substitute --extending partially diagonally of--.

Claim 7, line 2, change "to" to --for-- and change "support" to --supporting--;

line 3, after "above" insert --slick surface of--;

line 5, change the period to a comma and add --whereby shrimp are slid down the inclined trough and brought into contact with the knives which open the back of the shrimp and permit the water from said water sprays to remove the alimentary canal from the shrimp.--.

Claim 9, line 3, after "blocks" insert --extending diagonally in successively opposite directions--.

Claim 13, line 2, change "at" to --near--.

Claim 14, line 4, at the end of the line insert --directed upon the shrimp for sliding shrimp down the trough and--.

Claim 15, line 3, cancel "zones" and substitute --blades-- diagonally disposed of said trough opposite to one another-- and change "lease" to --least--;

line 5, change "zones" to --blades--; and

line 8, change "zones" to --blades--.

Add the following new claims:

--16. (to take the place of claim 4) A shrimp deveining machine comprising an inclined trough-like means having a surface over which shrimp are adapted to move, a plurality of diagonally set knives having edges directed upwardly of said trough, said knives extending at least partially across said trough in successively opposite directions and force directing means operatively associated with said trough whereby said shrimp are slid down said trough-like means to be engaged by said knives.

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7 --19. A shrimp deveining machine as claimed in claim 18 wherein said diagonally set knives are disposed with their blades raised above said inclined trough-like surface positioned to contact the alimentary canal of the shrimp being slid down said trough.

8 --20. A shrimp deveining machine comprising an inclined trough-like means having a surface over which shrimp are adapted to move, a plurality of diagonally set knives having edges directed upwardly of said trough, said knives extending at least partially across said trough in successively opposite directions and lubricating directing means operatively associated with said trough whereby said shrimp are slid down said trough-like means to be engaged by said knives.

Q -3- 31

REMARKS

Counsel wishes to thank the Examiner and the Honorable Primary Examiner for the courtesies extended at the interview had yesterday at which time the attached affidavits of Mr. Emile M. Lapeyre, President and General Manager of the Grand Caillou Packing Company, Inc., Mr. Mark A. Guidry, Plant Superintendent of the corporation, and Mr. Roy A. Guidry, Machine Operator at the plant, were exhibited and discussed. These affidavits are proffered for record herewith. It is believed to be clearly established by these affidavits of people qualified and competent to testify upon the subject that a device constructed in accordance with the present invention is clearly operative and functions satisfactorily in commercial practice.

The claims which have been rejected on formal grounds, for instance, the rejection based on indefiniteness, have been amended to remove this ground of rejection and are for reasons more fully pointed out in the discussion of the art of record believed to be allowable.

Regarding the rejection of claims 10 to 12 as failing to read upon a single figure of the drawings, the Examiner's attention is respectfully invited to Figures 6 and 8 showing the structure claimed.

The claims have been amended to traverse the holding of aggregation and to emphasize the patentable cooperative relationship existing between a trough-like surface, and diagonally disposed knives positioned in staggered relationship to a path of movement of shrimp down an inclined slick or fabricated surface. The affidavits uniformly state that when shrimp are allowed to slide down the trough of the

a-4-61 & 8.

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machine with the aid of a lubricating flow of water that their backs are slit by coming into contact with the knife blades positioned along the trough of the machine.

The claims rejected on the ground of aggregation have been amended to emphasize this cooperative relationship and are now believed to be properly allowable in both form and substance.

Claims 18, 19 and 20 are the claims discussed in detail with the Examiners at the interview and it is believed that these claims are in proper form and that the same are patentable over the prior art along with the other claims retained or amended for the following reasons.

Considering the art, neither the Hoh nor the Watson patents show a knife supported along its length on the surface of an inclined trough -like slide wherein the knives, more than one in number, are positioned to be engaged by shrimp for the purpose of deveining the same. The Watson patent relates to a pea huller and provides a single knife-like blade vertically upstanding partially through a slot in a horizontal plate along each side of which is provided guide members for guiding a pea pod into engagement with th: knife-like blade for opening the pod. The Hoh patent relates to a bread slicing device and teaches the use of buf a single blade upon a flat or horizontal surface for the single and sole purpose of cutting bread.

In neither of the references is there any teaching of inclining either the plate A of Hoh or the plate 1 of Watson for the purpose of permitting shrimp to tumble down the inclined surface and be engaged

by inclined knives supported along their length for deviating a shrimp.

Neither the Mah nor the Watson patents show a knife supported along its length and we therefore believe that the amendments to the claims will remove the objections. Further in the case of the Watson patent, the knife is not positioned parallel to the surface, but it is an inclined position with reference to the surface and the plane of the knife is perpendicular to the plane of the surface.

With reference to the Examiner's objection to claims 4 and 8, we agree that a mere plurality of knives do not constitute invention when the plurality is of a number of knives spaced successively in the same position. However, when as in this device, the plurality is of knives placed in different positions to achieve a desirable result which could not otherwise be obtained, we believe that the plurality constitutes invention, the arrangement of the knives being, of course, the critical feature.

With regard to the shrimp presenting their backs to the knives, the Examiner has apparently failed to observe the explanation which is given in the middle paragraph of page 11 where it is pointed out that a shrimp tends to fall with its back downward, a fact which insures that the back of the shrimp will usually encounter the blades. The Examiner overstates our position. Applicants do not claim that in all cases the back portions only are exposed to the action of the knives. The paragraph of the specification referred to points out that even if the shrimp should fall with its back upwards, slight mutilation results from contact with the blade inasmuch as the natural curve of the shrimp insures that

only the head and tail tips encounter the blade. The tendency of a shrimp to fall back foremost is determined by the center of gravity of the shrimp. This is made clear by an examination of the contour of a peeled shrimp which isthickest and heaviest towards its head and lightest and thinnest towards the tail portion. That fact considered in relation to the natural curve of the shrimp places its center of gravity near the back surface of the shrimp and slightly towards its head. These factors combine to compel a freely falling shrimp or a shrimp sliding on an inclined plane to present its back foremost.

The manner in which the veins or alimentary canals are washed out of the cut backs of the shrimp is described in the second to last paragraph of page 12 of the specification. It is not maintained that all of the veins are removed by this action. However, a substantial number of veins are so removed and the remaining veins may be removed by other means. Where the shrimp are further processed, such as by blanching preliminary to canning, it is found that a high percentage of veins are removed in the blanching operation. Whatever few veins remain may be found and removed on inspection of the shrimp prior to the canning.

Regarding the informality of the matter of signature of the applicant James M. Lapeyre, counsel has been advised that since the death of James M. Lapeyre (grandfather of James M. Lapeyre, III) that James M. Lapeyre, III has dropped the designation of the "III" which he had formerly employed to distinguish himself from his grandfather. If possible, it would be preferable if the designation "III"

following the typed name be striken. However, if this cannot be done, applicant can supply a new oath.

In view of the foregoing, a favorable action is hereby solicited.

Respectfully submitted,

FERNAND E. LAPETRE, et al

By Wilkinson & Hawkins
WILKINSON & HAWKINS,
Attorneys.

October 30, 1953.

EXHIBITS TO RAPHAEL Q. SKRMETTA DEPOSITION DATED 2/25/70

June 30, 1969

CONFRIO
Rua Serra da Bocaina, 194
Sao Paulo, Brazil

Attn: Mr. Roberto Gasparian

Dear Roberto:

With reference to the sale of deveining machines in Brazil, please be advised that the decision of the Judge in the Patent infringement lawsuit on our deveining machine brought by the Laitram Corporation against Deepsouth Packing Company has now been officially decided and our side lost. However, the decision did pinpoint two very slight technical areas, wherein we feel positive that we are now in a position to manufacture these machines. With the exception of two technical parts being packaged separately and added in the machine after arrival in Brazil, the forming of these combinations will not present problems of a legal nature in your country and we are willing to guarantee this fact, up to the full price of the Deveining Machine.

We are still awaiting to a reply to our last letter wherein we called to your attention the fact that we think you may well have paid a discriminatory price for your shrimp peeling machine. We also are interested in the exact amount that you paid for the cleaner and separator.

We informed you that we were building a Combination Cleaner and Separator that was of considerably better value and better operating machine than the separate Cleaner and Separator of our competition. We are please to tell you that this machine has been successful tested and the results are even more gratifying than we had projected for you. We hope that we can interest you in one of these devices to go with your shrimp peeling machine. Our price on our Skrmetta Combination Cleaner and Separator is $9,000.00 f.o.b. New Orleans.

We have just learned that Laitram has only one patent (the cutting part of the deveiner) in Brazil. The Drum that gets the vein out is not patented in Brazil. We also have learned the Brazilian Patent #54,882 of Laitram cannot successfully be used against you or us. We are willing to guarantee such up to the full value of our Deveiner, namely $13,200.00.

We thank you for your cooperation and look forward to your early reply, we remain

Yours very truly,

SKRMETTA MACHINERY CORPORATION

Ray Skrmetta, President

DEPOSITION Ex #1

May 27, 1960

CONFIRMED
Rua Serra da Bocaina, 194
Sao Paulo, Brazil

Att: Mr. Roberto Camperlan

Dear Roberto:

Enclosed please find Lees newer brochures and a copy of a letter we wrote Daisy in your behalf. If there is any reason why we cannot buy these goods for export, we know that we can buy at a considerably discount on other make like ours and export them to Brazil for you, provided there is no restriction by our government or your government.

It was indeed a pleasure to have you visit us, we look forward to a long friendship.

Please obtain the information on the prices of the Cleaner and Separator of Lattrun, and all other equipment if possible. This information will be extremely helpful to us, especially if is their latest and most compact prices.

My family sends regards to you and Daisy and your family as well. My son Eric feels that you and Daisy are very good special friends of his and I am grateful for the kindness shown him. With kindest personal regards, we remain

Yours very truly,

DEEP-KNITH PACKING CO., INC.

By Kennetta, President

Opogs Split #2

July 23, 1969

CONFRIO
Rua Serra da Bocaina, 194
Sao Paulo, Brazil

Att: Mr. Roberto Gasparian

Dear Roberto:

Please find enclosed very interesting information on the lawnmower equipment, we hope that what we have done is pleasing to you and that we will be in a position to assist you further in this program.

We acknowledge receipt of your last cable giving us the prices we needed and are very grateful for same.

We currently are in a new program of manufacturing additional shrimp peeling machines, exactly the same as the type shown you when you were in New Orleans.

We are manufacturing two additional machines, our Skrmetta Combination Cleaner and Separator and our Skrmetta Cleaner. The last machine is identical to the one you purchased from Laitram and is going to be priced at $3,000.00 f.a.s. New Orleans. Our Combination Shrimp Cleaner and Separator, which does a remarkable job, is priced at $ 9,000.00.

We can manufacture Deveining Machine for sale in Brazil and all foreign countries, without any legal problem. We are handicapped by a decision against us in the United States, this was a very technical decision and we can manufacture the entire machine without any complication in the United States, with the exception that there are two parts that must not be assembled in the United States, but assembled after the machine arrives in Brazil. This assembly will take less than one hour.

The time is fast approaching when time could be found for a trip to Brazil, providing you find a need for our services. We could not visit for vacation until some months have passed.

With kindest regards to you and your lovely family, we await hearing from you, we remain

Yours very truly,

SKRMETTA MACHINERY CORPORATION

Ray Skrmetta, President

DEPOSITION Exhibit No. 3

August 9, 1969

CONFRIO
Rua Serra da Bocaina, 194
Sao Paulo, Brazil

Att: Mr. Roberto Gasparian

Dear Roberto:

Enclosed please find a copy of a letter we received from Jacobsen Manufacturing Company on the prices on their equipment. At such time as we can be of further assistance to you on the tractor type lawn mowers and accessories, please advise.

In following up the shrimp peeling and shrimp deveining machine discussions we had with you, please be advised that we are absolutely free of any legal problems of our shrimp peeling machines in the United States and in the foreign countries. On the deveining machine, we have a legal problem in the United States and this problem is not settled yet, but we expect same to either be settled shortly, or that we will at least know the direction it is going. However, in Brazil, we feel that there will be no problem and we are willing to guarantee this feat up to the full purchase price of the machine.

It would be extremely helpful in our planning if you would write us a letter telling us of your plans for the next six to twelve months on shrimp equipment.

Please give our very best wishes to Daisy and your family and with kindest regards, we remain

Yours very truly,

DEEP SOUTH PACKING CO., INC.

Ray Skinetta, President

Encl.

DEPOSITION Exhibit 4

September 4, 1969

CONFRIO
Rua Serra da Bocaina 194
Sao Paulo, Brazil

Att: Mr. Roberto Gasparian

Dear Roberto:

Enclosed please find a Proforma Invoice covering one Skrmetta Shrimp Deveiner Machine, it will be a pleasure to furnish this machine in accordance with our conversations when you were in New Orleans, and in accordance with information in the letters we have written since you returned to Brazil. We do hope that you can give us a firm order quickly, then we can visit you as soon as the machine is delivered in Brazil and can operate same with your people for a few days.

In event you feel you would require my visit earlier than at the time of the delivery of the deveiner, please advise and I will visit you when you feel it is the proper time. We certainly hope that we can furnish you some of our Shrimp Peeling machines and other equipment.

It will be wonderful to visit with you and Daisy and your family. My son Eric remembers you both oftentimes, he wants to visit you too, but his school work may prevent his visit.

Please write us in English, but remember Vilma can handle letters in Spanish. We thank you and with best wishes, we remain

Yours very truly,

SKRMETTA MACHINERY CORPORATION

Ray Skrmetta, President

DEP. Exhibit 5

confrio

Rua José Bonifácio, 170 - 10.º andar - PABX 32-0324 - 32-0712
Rua Barão de Itambi, 124 - Tel.: 32-0271 - São Paulo
Rua Capitão Luiz Soares, 60 - Telex [illegible] - São Sebastião

São Paulo, 21 de agôsto de 1969.-

SEBASTIAN MACHINERY CORP.
3536 Lowerline Street
New Orleans

Att. Mr. RAY SEBASTIAN

Dear Ray:

We acknowledge receipt of your letter dated july 23, and the writer is particulary very glad to know that you're practically free to compete all over the world since we understand the limitations you were compelled dont represent an actual handicap.

Furthemore our organization is very happy to be informed of the above decision since we are definitelly interested to import a deveining machine. Therefore we beg you to forward soonest a proforma invoice.

We also would much appreciate your coming since we believe it can be an oportunity to study the convenience to install other equipments we could find useful to our plant and where your help could be needed. Of course the writer, on the ocasion, will be delighted to reciprocate your lovely hospitallity.

Regarding the lumsmower we are grateful for your informs but Brasilian government still believes it's a superfulous equipment what turns the importation too expansive.

Finally the writer wants you to forgive him for the delay to answer but he needed help to answer in english on a proper way.

Looking forward to hear or to meet you we remain.

Yours very truly.

DEP Exh. 6

SKRMETTA MACHINERY CORPORATION

Machinery - Parts - Service

3538 LOUISIANA STREET
NEW ORLEANS, LA. 70125

INVOICE NO. 127 CUSTOMER'S ORDER DATE September 4, 1969

SOLD TO: Companhia Nacion de Prigorificos - CONFRIO
Rua Serra da Bocaina, 194
Sao Paulo, Brazil

SHIPPED TO:

DATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN	
On Request	Steamer	Net cash	New Orleans	Skrmetta	

		PROFORMA		
	ONE	SKRMETTA SHRIMP DEVEINER machine, model BV470 Serial No. 1201 powered by a 1 H.P.,3 phase, 60 cycle 220/440 volt, totally enclosed Syncrogear electric motor; complete with FEED CONVEYOR powered by a 1/3 H.P.,220 volt, 3 phase, 60 cycle electric motors; a DISCHARGE CONVEYOR powered by a 1/2 H.P., 220 volt, 3 phase, 60 cycle electric motor and a SKRMETTA JET WASHER.		
		At $ 13,250.00 each		13,250.00
		Export Crating extra, F.A.S. Steamer New Orleans.		

DEP Exh. 7

Redfern ©
75748

INVOICE

DEP. EXH. NO. 8

October 30, 1959

CONFRIO
Rua Serra da Bocaina 194
Sao Paulo, Brazil

Att: Mr. Roberto Camperias

Dear Roberto:

We received your cable yesterday as follows:

-"RELETTER AUGUST 21ST AND SUBSEQUENT CABLE PLEASE INFORM WHETHER LEGALIZED INVOICES FORWARDED"

CONFRIO

We cabled you today as follows:

"RECABLE NO LEGALIZED INVOICE FORWARDED TELEPHONING YOU TODAY ALSO AIRMAIL LETTER TODAY REGARDS"

SKINNETTA MACHINERY CORPORATION
RAY

We are confused about words "whether legalized invoices forwarded". In our checking, we are informed that legalized invoices are not available until after the machinery is loaded aboard the ship and the ship has left port.

We have been awaiting your reply to our letter of September 4, regarding the Proforma Invoice covering One Skinnetta Shrimp Deveiner Machine, also dated September 4, please note on copy attach of our letter of September 4 the underscored wording "we do hope that you can give us a firm order quickly". By these words, we hope that we have not misunderstood the situation, but we did not consider that we had your actual order to go ahead with the machine. If we are in error on this matter, please cable immediately and we will rush the machine with all speed possible and make the earliest shipping date.

If we misunderstood that you have already given us a firm order, this will be one of the tragedies of my life, for I have been hopefully awaiting your confirmed order. We sincerely want to ship you a machine and visit you in Sao Paulo. If we had misunderstood, please forgive us and we promise to make it up to you and we begin completion of machine immediately on receipt of your cable.

We thank you for your cooperation and with kindest personal regards to you and your family, we remain

Yours very truly,

SKINNETTA MACHINERY CORPORATION

P.S. We are trying to reach you by telephone today and this letter will go forward to prevent any misunderstanding of our telephone conversation.

500 SAINT PETER STREET
(JACKSON SQUARE)
NEW ORLEANS, LOUISIANA 70116
(504) 522-4211

1364 NICHOLSON DRIVE
BATON ROUGE, LOUISIANA 70802
(504) 343-6041

27-60

Law Offices of
C. EMMETT PUGH
Registered Patent Attorney

February 2, 1970

Edison C. Valenca, Esquire
Paulo C. Oliveira & Company
Attorneys-At-Law
Av. Rio Branco, 173, 17,° Andar
Rio De Janeiro, Brazil

Re: Deepsouth Packing Co., Inc. - Sale and Use of Deepsouth Deveiner in Brazil

Dear Mr. Valenca:

Mr. Shrmetta has forwarded your letter of January 29, 1970 to me for my review and comments.

I. From your remarks, particularly those with respect to section 2, I, it seems clear that we can invalidate Laitram's Brazil Patent No. 54,882 on the basis that their slitter/deveiner was in public use here in the United States prior to September 27, 1954, their Brazilian filing date.

From the sworn testimony of Laitram's own President and the co-designer of their machine, we can conclusively establish that:

1) Laitram's slitter/deveiner was in commercial use in the plant of Grand Caillou Packing Co. at Dulac, Louisiana in 1954, well before September 27th, and was on public display and use there for other shrimp processors to see for demonstration purposes prior to June 3, 1954;

2) Laitram's slitter/deveiner was on exhibit at the Tenth Annual Shrimp Festival at Biloxi, Mississippi on July 30 and 31 and August 1, 1954, and demonstration runs on the machine were there made for the public.

Cable Address: "PAT. PEND.—NEW ORLEANS"

27-61

Photographs of the machines taken at both the Dulac Plant and the Biloxi exhibit in 1954 are available and the machines shown therein are in all material respects, identical to the machines Laitram now has.

II. I also believe the Laitram slitter/deveiner was pictured in trade magazines prior to September 27, 1954, and this perhaps could form a second, independent basis of invalidating the Laitram Brazil patent as having been described in a printed publication prior to the Brazil filing date.

III. It is noted that the Brazilian patent was filed for more than one year after Laitram had filed its U.S. Application (September 27, 1954 as compared to August 19, 1953). Is this also absolute grounds for invalidating its patent?

IV. Rather than filing a court action to invalidate the Brazilian Patent, are the above grounds as well as the ground of non-working for three consecutive years just as effective as defenses against any actions Laitram may take against Deepsouth or our customer? Would Brazilian law allow Laitram to obtain a preliminary injunction against our customer, particularly in light of the U.S. Court holding of infringement, stopping our customer from using the Deepsouth machines, or would the Brazilian Court wait until the full matter had been tried and both sides heard? If we filed a petition to cancel the Brazilian Patent, would we have to wait until the petition is granted before importing the deveiner? How long do these proceedings take? In general, would you please compare the advantages and disadvantages (costs, time required, etc.) of filing a petition to cancel the patent as compared to waiting until Laitram filed an opposition or infringement suit with Deepsouth therein defending the action on one or more of the above mentioned grounds?

Your prompt response to my questions would be greatly appreciated. You may address your reply to either Mr. Skrmetta or to me at my above listed New Orleans address.

Enclosed is a check for $100.00 in payment of your statement.

Yours very truly,

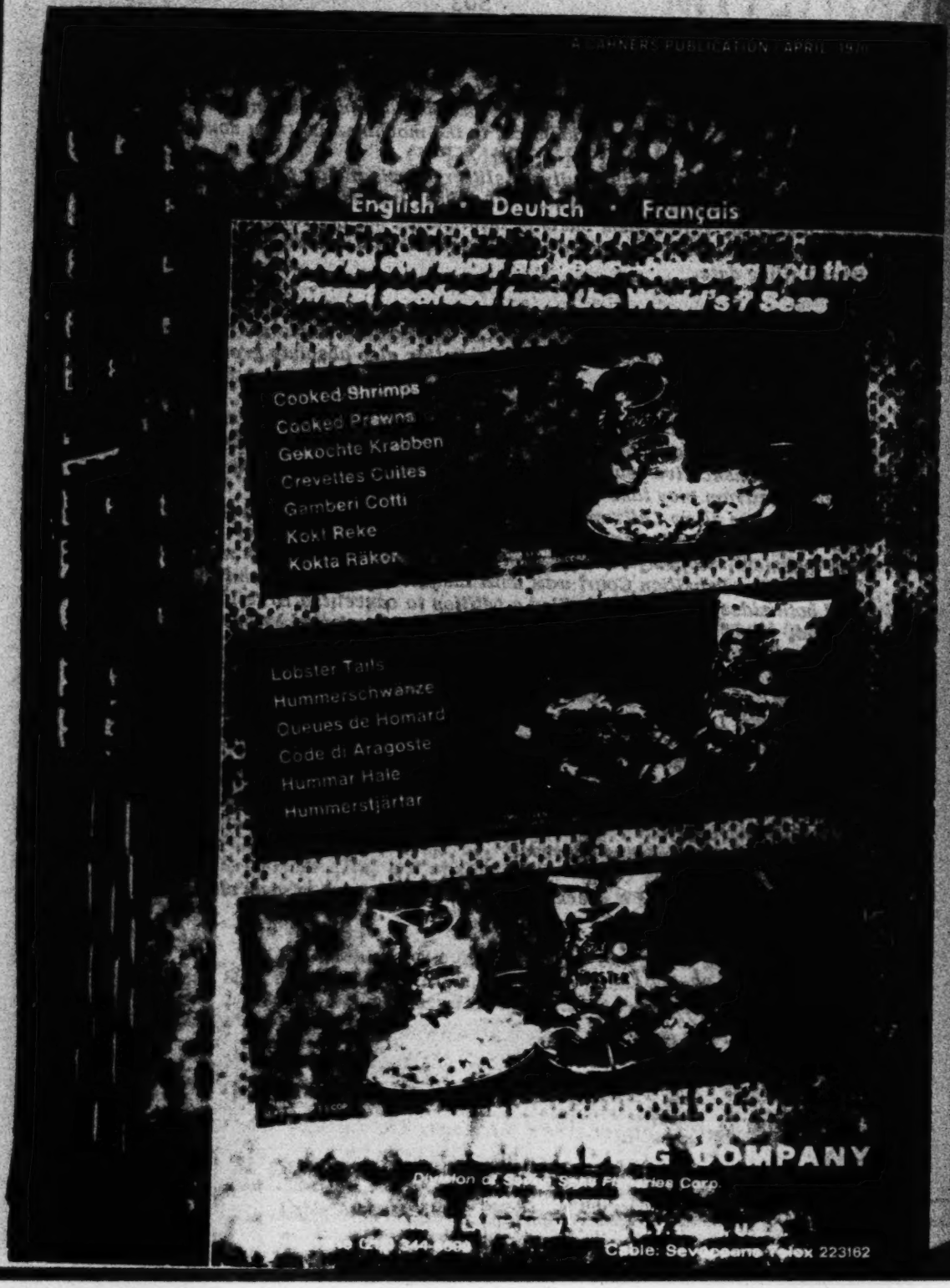
Edmund Kopf

CEP/cs

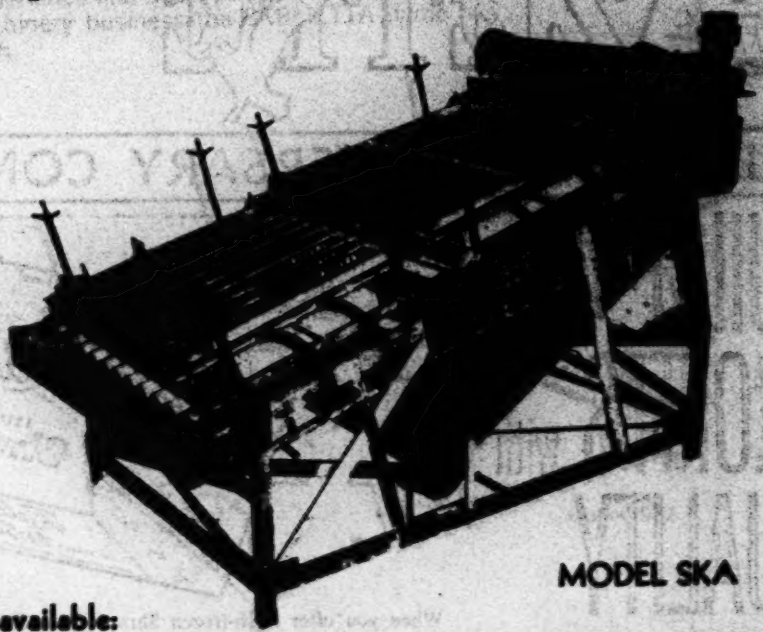
Enclosure

GS

EXHIBITS TO DEFENDANT'S MEMORANDUM IN SUPPORT OF IMMEDIATE
DISCOVERY PURSUANT TO DEFENDANT'S MOTION TO SET ASIDE INJU



SKRMETTA
Shrimp Peeling Machines



MODEL SKA

Other machines available:

- Model SK-PGAA (same as SKA) except for change parts to convert for peeling precooked shrimp.
- Skrmetta Automatic Shrimp Cleaning Machine . . . available May 6th.
- Skrmetta Shrimp Peeler Model 100-E.
- Skrmetta Shrimp Peeler, Junior Model 101-B.
- Skrmetta Automatic Shrimp Deveiner, Model BV 470
  (available only for export in partially unassembled form and use in most foreign countries)
- Skrmetta Automatic Shrimp Blancher
- Skrmetta Combination Shrimp Cleaner and Separator
- Other machinery used in shrimp processing plants

Because of our long experience and know-how in the shrimp industry and the shrimp machinery business the SKRMETTA name has become synonymous with

PERFORMANCE - ECONOMY - DEPENDABILITY

Service and Change Parts are available for SKRMETTA manufactured machines and other competitive machines.

For complete information write or phone Ray Skrmetta

SKRMETTA MACHINERY CORPORATION

3536 Lowerline Street, New Orleans, La. 70125, USA

Phone (504) 488-4413

EXHIBIT 2-A

4

FISHING GAZETTE

THE RECOGNIZED AUTHORITY OF THE COMMERCIAL FISHING INDUSTRY—PUBLISHED CONTINUOUSLY SINCE 1891

APRIL 1970

NFI SILVER ANNIVERSARY CONVENTION

BUILD PROFITS with QUALITY SHRIMP

When you offer fresh-frozen Shrimp from S. I. Greene & Co. you've got everything going for you . . . superior quality — attractive packaging — top availability — fastest delivery, anywhere — a substantial mark-up — supplier dependability backed by 25 years of experience. You'll find it easier to open new accounts, increase repeat business and improve profits with Raly Brand (imported from India exclusively by S. I. Greene & Co. for all of North America) and popular domestic Middy and Cadet Brands.

S. I. GREENE & COMPANY

EXHIBIT 2-B

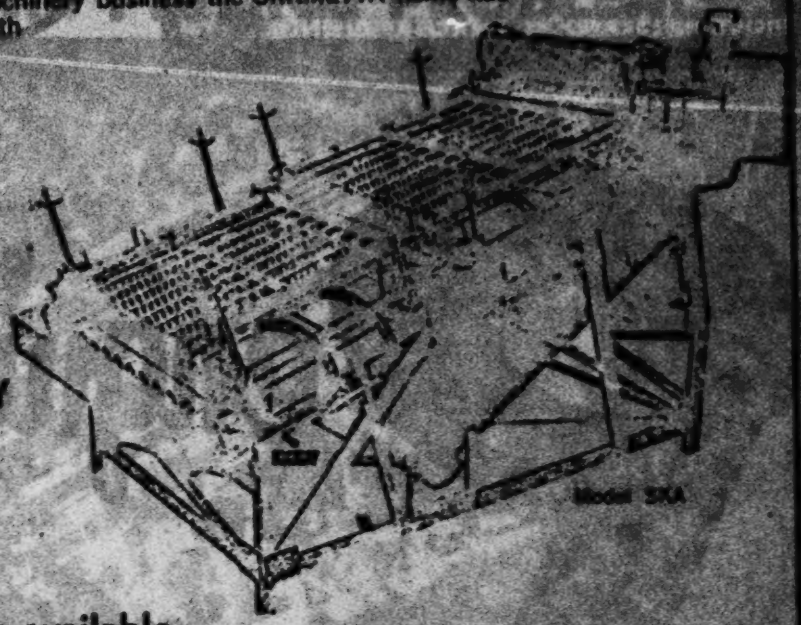
SKRMETTA
Shrimp Peeling Machines

Because of our long experience and know-how in the shrimp industry and the shrimp machinery business the SKRMETTA name has become synonymous with

PERFORMANCE

ECONOMY

DEPENDABILITY



Other machines available:

- Model SK-PCAA (same as SKA) except for change parts to convert for peeling precooked shrimp.
- Skrmetta Automatic Shrimp Cleaning Machine . . . available May 6th.
- Skrmetta Shrimp Peeler Model 100-E.
- Skrmetta Shrimp Peeler, Junior Model 101-B
- Skrmetta Automatic Shrimp Deveiner, Model BV 470 (available only for export in partially unassembled form and use in most foreign countries)
- Skrmetta Automatic Shrimp Blancher
- Skrmetta Combination Shrimp Cleaner and Separator.
- Other machinery used in shrimp processing plants

Service and Change Parts are available for SKRMETTA manufactured machines and other competitive machines.

For complete information write or phone Ray Skrmetta

SKRMETTA MACHINERY CORPORATION

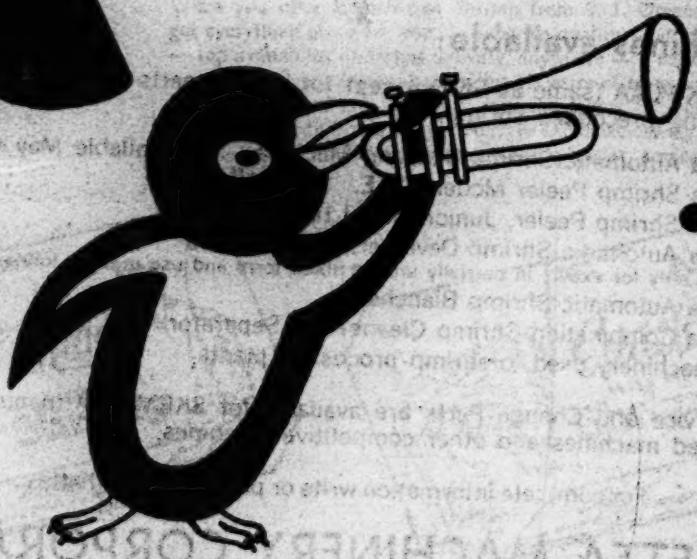
3536 Lowerline Street, New Orleans, La. 70125

Phone: (504) 488-4413

2B

APRIL - 70
NFI
PREVIEW

Penguin®



PENGUIN FROZEN FOODS, INC.

P. O. BOX 848 NORTHFIELD, ILL. 60093

PH. A/C 312-446-8530

LOOK TO SKRMETTA FOR THE ANSWER TO ALL YOUR SHRIMP PEELING PROBLEMS

* Available on Model 35A for or Model 35-FOA, which is same as 35A except for change parts is geared to for peeling pre-cooked shrimp.
* Skrmetta Automatic Cleaner Model 35-C available May 1.
* Skrmetta Automatic Shrimp Peeler Model 35-C.
* Skrmetta Shrimp Peeler, Junior, Model 35-A.
* Skrmetta Automatic Shrimp Cleaner Model M-270 available only for export in partially assembled form and not in stock headings available.
* Skrmetta Automatic Shrimp Blancher.
* Combination Cleaner-Separator for local trade on Alaskan and Maine shrimp.

SKRMETTA MANUFACTURERS A COMPLETE LINE OF SHRIMP MACHINES.

SKRMETTA IS KNOWN FOR PERFORMANCE, ECONOMY AND DEPENDABILITY.

Service and change parts are available for Skrmetta manufactured machines and other competitive machines.

For complete information, write or phone Ray Skrmetta

SKRMETTA MACHINERY CORPORATION

3536 LOWERLINE STREET NEW ORLEANS, LA. 70125 TEL: 504/488-4413

EXHIBIT 4-A

PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS
COUNSELLORS AT LAW
HIBERNIA BANK BUILDING
NEW ORLEANS 70112
AREA CODE 504-525-1234

May 4, 1970

C. EMMETT PUGH
Attorney-At-Law

14,840-173

RECEIVED
MAY 4 1970
BY:

C. Emmett Pugh, Esq.
500 St. Peter Street
New Orleans, Louisiana 70116

Dear Mr. Pugh:

In a telephone conversation that I had with you a few days ago you asked whether I would advise you as to what the intentions of The Laitram Corporation might be with regard to a machine that has been shipped by Mr. Skrmetta or one of his corporations to Iceland. I hope you will understand that neither I nor The Laitram Corporation have any first hand knowledge as to precisely what kind or type of machine has been shipped. It is our understanding, however, that it is a shrimp peeling machine.

In view of these uncertainties, I am sure you will understand that it is not possible for me to tell you, with any degree of certainty, just what action, if any, The Laitram Corporation might take in Iceland.

As you know, Mr. Skrmetta is well aware of the fact that The Laitram Corporation has patent rights in Iceland regarding its peeling machine, inasmuch as an infringement suit was instituted in Iceland back in 1960 when Mr. Skrmetta or one of his companies had sold to a customer in Iceland one of his infringing peeling machines. As a result of that litigation, no further use was made in Iceland of Mr. Skrmetta's machine and, so far as I know, since that time Mr. Skrmetta has sent no peeling machines to Iceland until the present instance.

You also know that it is the general policy of The Laitram Corporation to enforce in foreign countries such patent rights as it may have in those countries. I would not think that

the present instance would be any exception. The ultimate decision, however, as to what, if any, action The Laitram Corporation may take in Iceland will depend upon the exact nature or type of machine presently being shipped to or put in use in Iceland and upon other factors that will have to be considered by The Laitram Corporation at the time any such action is decided upon by that company. I think I can say, however, for your guidance and for the guidance of your client, that if the machine in question does constitute an infringement of The Laitram Corporation's Icelandic patent it may be that proceedings will be instituted in Iceland regarding such infringing machine, just as such proceedings were previously instituted in 1960

With kind personal regards, I am

Yours sincerely,

Louis B. Lawrence

22

AFFIDAVIT OF RAPHAEL Q. SKRMETTA, DATED 11-28-69

UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

THE LAITRAM CORPORATION
Plaintiff

CIVIL ACTION 67-861

versus

DEEPSOUTH PACKING CO., INC.
Defendant

SECTION C

AFFIDAVIT OF RAPHAEL Q. SKRMETTA

State of Louisiana

Parish of Orleans

Before me, the undersigned authority, personally came and appeared RAPHAEL Q. SKRMETTA, who, having been by me first duly sworn, did depose and say that:

1. He is President of Deepsouth Packing Company, Inc., the defendant in Civil Action No. 67-861 of the docket of the United States District Court for the Eastern District of Louisiana, New Orleans, Division;

2. He is President of Skrmetta Machinery Corporation, a corporation of Louisiana, the same Skrmetta Machinery Corporation referred to in plaintiff's "Motion to Modify Writ of Injunction" recently filed in these proceedings,

3. Neither Deepsouth Packing Co., Inc., Skrmetta Machinery Corporation, he himself nor any other party acting on their behalf or at their request has advertised, offered for sale, promoted or solicited orders for making, using or selling any apparatus which infringes either Claim 3 of United States Letters Patent No. 2,694,218 or Claim 1 of United States Letters Patent No. 2,825,927 since the issuance of the writ of injunction signed and issued in these proceedings on June 30, 1969; nor is there any intention on the part of Deepsouth Packing Co., Inc., Skrmetta Machinery Corporation or himself to so advertise, offer for sale, promote or solicit order unless the decision of this Court is reversed by the Circuit Court of Appeals for the Fifth Circuit or by the Supreme Court of the United States.

4. The advertisements used in "The Fish Magazine", "Fishing Gazette" and "Quick Frozen Foods International" (referred to in the affidavit of Leroy E. Demarest recently filed herein) were directed to the promotion and sale of the Skrmetta shrimp peeling machinery and not to any Skrmetta shrimp deveining machinery (much less to any supposed infringing portion thereof) which was only generally or incidentally mentioned therein; had any customer or potential customer inquired about the Skrmetta rocking slitter and/or the Skrmetta discharge conveyor with fingernail belt therein, the customer would have been informed of the results and status of the present litigation and Deepsouth Packing Co., Inc., Skrmetta Machinery Corporation and/or Raphael Q. Skrmetta would have refused to make, use or sell in the United States either such apparatus had such an order been placed.

5. The articles which appeared in the April, 1969 issue of "The Fish Boat" and the December, 1968 issue of the "Fishing Gazette" (referred to in the affidavit of Leroy E. Demarest recently filed herein) were articles written by the journalists of those magazines and prepared independently of Deepsouth Packing Co., Inc., Skrmetta Machinery Corporation and/or Raphael Q. Skrmetta, and in no way constituted or was intended to constitute the advertising, offering for sale, promoting or soliciting orders for making using or selling any apparatus which infringes Claim 3 of U.S. Patent 2,694,218 or Claim 1 of U.S. Patent 3,525,927 in the United States.

6. Neither Deepsouth Packing Co., Inc., Skrmetta Machinery Corporation, he himself nor any other party acting on their behalf or at their request had made, used or sold any apparatus which infringes Claim 3 of U.S. Patent 2,694,218 or Claim 1 of U.S. Patent 3,525,927 or has made, used or sold a deveiner including or comprising the Skrmetta rocking slitter or a Skrmetta discharge conveyor having a fingernail belt therein since June 30, 1969

the date of issuance of the Writ of Injunction herein, nor does Deepsouth Packing Co., Inc., Skrmetta Machinery or Raphael Q. Skrmetta have any intention to make, use or sell any such apparatus or deveiner.

7. Skrmetta Machinery Corporation in a very limited manner has solicited orders for deveining machinery comprising machinery such as the Skrmetta jet washer, which the Laitram Corporation has admitted is not an infringement of its U.S. deveiner patents, and has solicited orders in a likewise very limited manner from customers outside of the United States for rocking devices not having any knives therein and discharge conveying devices not having any fingernail belts therein; when such an order is received, it is the intention of the Skrmetta Machinery Corporation to build such rocking devices without knives and discharge conveying devices without fingernail belts and to ship such devices out of the United States with any use or further assembly of the devices to be performed outside of the United States; he is informed by legal counsel that such activities do not constitute an infringement of either of Laitram's U.S. deveiner patents.

8. In soliciting orders from foreign customers, it is the policy of the Skrmetta Machinery Corporation to inform all customers and potential customers of the results and the status of the present litigation and, in pursuance to this policy, a letter (a retyped copy of which is attached hereto as Exhibit 1) so informing its customer was sent to Mariscos Isles de Perlos of Panama (referred to as Pearl Island Seafood Co. in the affidavit of Leroy E. Demarest) to the attention of Mr. Fred Humbert in July, 1969. Moreover, Mr. Humbert was further informed of Laitram's alleged Panamanian Patent and it was suggested that their Panamanian lawyer investigate any such rights of The Laitram Corporation.

9. Skrmetta Machinery Corporation was formed in 1968 for the primary purpose of manufacturing shrimp peeling machines of a design never before manufactured by any Skrmetta related business entity and the same constitutes its major business enterprise today.

RAPHAEL Q. SKRMETTA, pro se and as
President of Deepsouth Packing Co.,
and Skrmetta Machinery Corporation

Sworn to and subscribed before me, this 28th day of November, 1969.

Notary Public in and for the
Parish of Orleans,
State of Louisiana

EXHIBIT I.

July 16, 1969

Mariscos Isles de Perlos, S.A.
Post Office Box 5229
Panama 5, r. de Panama *Att: Mr. Fred Humbert*

Dear Freddie:

It was a pleasure speaking with you by phone the other day, we thank you for the courtesy you and your staff extended to our Mr. Tony Barhanovich. He told me of the fine improvements in your plant and the anticipated enlarging of the I.Q.F. facilities to add two thirds to your present production, that is where we can fit into the picture. As they told you, if there is anything we can do to assist you along these lines, please call on us.

Tony mentioned that you were not getting proper cutting on your present deveining set up. Well as he told you, Mr. Morgan Daniel used our method for eight (8) years and got wonderful results, especially for Campbell Soup and the U.S. Army. Therefore, we feel you will be well satisfied with our system.

We are pleased to offer our peeling machines at $20,000.00 and Combination Cleaner and Separator at $ 9,000.00 and our Deveiner at $13,250.00 F.A.S. New Orleans, export crating extra.

We have a legal problem on the Deveiner in the United States. We have no Foreign Patent problems, but we must call this to your attention. We have no patent or legal problems on any of our other machines.

Parts for all machines, including peelers purchased by you from Laitram, will be kept in stock and will be readily available.

It would be very pleasing to visit and work with you both here in New Orleans and in Panama. With kindest regards and best wishes from Tony and me, we remain

Yours very truly,

SKRMETTA MACHINERY CORPORATION

Rav Skrmetta, President

ADDITIONAL PORTION OF FILE WRAPPER FOR PATENT 2,694,218

6. A shrimp de-veining machine comprising an inclined trough, a water supply to said trough, and knives spaced above the trough and staggered at opposite sides of a path down the trough, the knives being diagonally disposed to the path in successively opposite directions.

7. A shrimp de-veining machine comprising a slick-surfaced trough, means to support the trough at an inclination, knives raised above the trough and set diagonally of the trough in successively opposite directions, and controlled water sprays above the knives.

8. A shrimp de-veining machine comprising an inclined trough, means to adjust the angle of inclination of said trough, and fixed knives raised above the trough and extending diagonally in successively opposite directions.

9. A shrimp de-veining machine comprising a trough, means to propel shrimp flatwise through the trough, and knife assemblies in the trough including upper and lower clamp blocks, knives between and projecting from the blocks, means to secure the blocks together on the knives, the lower blocks being secured to the trough.

10. A shrimp de-veining machine as claimed in Claim 9 in which an assembly carries a plurality of knives at different elevations above the trough.

11. A shrimp de-veining machine according to Claim 9 in which an assembly carries upper and lower spaced knives with the upper knife extended beyond the lower knife.

12. A shrimp de-veining machine according to Claim 9 in which a knife comprises a number of safety razor blades fitted end to end to the requisite length.

13. A shrimp de-veining machine comprising a trough pivoted at its lower end, an adjustable jack at its upper end to vary the inclination of the trough, and knives on the trough in the path of shrimp sliding down the same.

14. A shrimp de-veining machine comprising an inclined trough down which the shrimp are induced to slide, a knife in said trough positioned to be encountered by the shrimp to cut the membrane confining the vein, and a water spray to the trough for flushing out the vein through the severed membrane.

15. A shrimp de-veining machine comprising an inclined trough down which the shrimp are adapted to slide back-first, a plurality of cutting zones in said trough each having at least one blade positioned to be encountered by the back of the shrimp which severs the back membrane, said zones being spaced apart to provide a clear drop space for affording the shrimp opportunity to regain the back-first drop position prior to entering the next successive zone.

TRANSCRIPT OF PROCEEDINGS IN DISTRICT COURT, May 23 - 28, 1968 - TESTIMONY OF DONALD A. FISCHER.

BY MR. ERLINGER:

Q Is there any suggestion or teaching in White that the device could be used for deveining shrimp?

A No.

* * * * * * * * *

(511) when it comes to typing, because for instance, look, there are no tees, no elbows, it's not detailed at all. So, all it is is a diagram to an engineer that tells him to put a spray on.

THE COURT: To save time, is it fair to say this paragraph you are talking about, now, really just relates to the valve and mere force of water?

BY MR. BIRCH:

Q Yes, that was my next question, Your Honor.

A That paragraph I read, yes, sir, but the reason I referred to it, it indicates the use of water and why and how it has to be adjusted, so it would be how you turn the water on there to accomplish what you want to do.

Q As a patent attorney, Mr. Fischer, are you acquainted with the doctrine of claim differentiation.

A No, I am not.

Q May I invite your attention to the claims 1 and 3 that you have been interrogated about by the Court?

A Right.

Q How was the water described in claim 1?

A In claim 1, it states as a water supply to the trough.

(512) Q In claim 3?

A In claim 3, it's a water spray to the trough directed upon the shrimp for sliding shrimp down the trough.

Q Do you deem those two to be equivalent?

A Yes, I do. And I explained to the Court why I thought that that was put in claim 3 and why, to me that indicated it wasn't a critical part.

BY THE COURT:

Q Let me interrupt again at this stage: You would attach no significance, then, of the change made during the patent process, say that this has no real significance, even though it was required during the process?

A That is right. And I do that because it had to do with a semantic-type thing and they are just trying to acquire connection between the parts.

BY MR. BIRCH:

Q What type of rejection, Mr. Fischer, do you believe an examiner must make before an amendment becomes critical?

A I think in this case, for instance, if the examiner said, "Here is a patent, it shows everything you got and look at it, it has water coming down," and then if the man that applies for the

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(664) BY MR. BIRCH:

Q Do you wish to add to that answer, Mr. Fischer?

A Abrasion we are talking about, in the patents that mention abrasion, I assumed that's what we were talking about.

Q Yes, that's correct.

Well, in your opinion, is the teaching in the patent with respect to abrasion and the use of water to prevent it equally applicable to the drum and the troughs as shown in Figures 15 through 18?

A Yes.

Q Now, would you say then that the level of water which is maintained in those troughs would be roughly comparable to that maintained in the drum as taught with respect to the drum?

A I would not.

Q What would you say that level should be?

A I would say that I -- if I used the trough, I'd build a trough and I'd try out the water level until I get the best operating water level, that would be far